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File No. 19-29192 PRG
Attorneys for Plaintiffs, Demetrio Flores-Hernandez

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Demetrio Flores-Hernandez, an individual: CIVIL ACTION NO.
and Theresa Lopez, an individual and :
per quod : HON.

Plaintiffs

v.

UNITED STATES OF AMERICA;
DR. SAMUEL PRESCHER, a physician;
TAIBAT GBADAMOSI, N.P., a nurse
practitioner; DR. EILEEN
MASTERSON, a physician; KENDIE
CASTILLO, F.N.P., a nurse
practitioner; DR. SCOTT SIEGAL, a
physician NJ OCEAN HEALTH
INITIATIVE, INC. (OHI), a business
entity; John Does (1-5), fictitiously
named physicians, nurses, and/or
individuals; Jane Does (1-5),
fictitiously named physicians, nurses,
and/or individuals; ABC Companies
(1-5), fictitiously named business
entities; JOHN DOE, MD 1-5, a
fictitiously named medical doctor

Defendants

COMPLAINT

The Plaintiff, Demetrio Flores-Hernandez, an individual and his wife, Theresa Lopez, individually and per quod, residing at 167 Lucy Road, Township of Lakewood, County of Ocean and State of New Jersey, by way of Complaint against the Defendants does say:

INTRODUCTION

1. Plaintiff Estate files this Complaint against the defendant, United States of America, pursuant to the Federal Tort Claims Act (“FTCA”) 28 U.S.C. sec. 1346(b), and 28 U.S.C. sec. 1331.

2. Plaintiff also files this Complaint against individual defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (herein “Ocean Health”)

3. Plaintiff brings this civil action against the defendants for medical negligence that was discovered on or about July 11, 2019. The Plaintiff generally alleges that the United States of America and its employees including Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (herein “Ocean Health”), did fail to provide Mr. Flores-Hernandez with appropriate medical care that resulted in his sustaining kidney damage necessitating him to be on dialysis for several days a week and necessitating a kidney transplant.

4. Plaintiff alleges entitlement to money damages under Federal law for medical malpractice committed by Federal employees and/or Federal contractors that were operating through Ocean Health.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this claim against the United States of America for money damages pursuant to 28 U.S.C sec. 1346(b)(1).

6. The Court has ancillary jurisdiction over the defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (herein "Ocean Health"), as these Defendants negligently provided medical services to the Plaintiff and their conduct caused and/or contributed to the Plaintiff sustaining permanent kidney damage requiring dialysis three (3) days a week and necessitating a kidney transplant.

7. The acts or measures giving rise to this claim occurred through various locations at Ocean Health facilities all located within Ocean County, New Jersey. Furthermore, the Plaintiff at all times resided in the State of New Jersey. Therefore, venue is properly placed in the United States District Court, District of New Jersey.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. On December 21, 2020, the Plaintiffs, Demetrio Flores-Hernandez and Theresa Lopez, did file a Notice of Claim (Claim Form 95-109) under the FTCA with the U.S. Justice Department which provided said notice to the U.S. Department of Health and Human Services (HHS).

9. More than six (6) months have passed since service of Notice of Claim and the Department of Health and Human Services has failed to take a position as to liability and/or damages in this matter.

PARTIES

10.. The Plaintiff, Demetrio Flores-Hernandez, was born on November 29, 1958. The Plaintiff currently resides in the Township of Lakewood, County of Ocean, and State of New Jersey.

11. At the time of the incident in question, the Plaintiff, Demetrio Flores-Hernandez, and his wife, Theresa Lopez, were both residents of Ocean County.

12. At all times mentioned herein, the United State of America, it's employees, including Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., and Dr. Schott Siegal, were self-employed physicians and/or Nurse Practitioners and/or affiliated with the Defendant, NJ Ocean Health Initiative, Inc. (OHI), a business entity with a business address of 10 Stockton Drive, Township of Toms River, County of Ocean, and State of New Jersey.

13. The United State of America, it's employees, including the Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5); did own and operate a medical center located at 10 Stockton Drive, Township of Toms River, County of Ocean, and State of New Jersey. Upon information and belief, said facility was approved and accredited by a governmental authority including, but not limited to, the New Jersey Department of Health.

14. At all times mentioned herein, ABC Companies (1-5), are currently unknown business entities that are affiliated with the Defendants.

15. At all times mentioned herein, John Does (1-5), are fictitious physicians, nurses, and/or individuals associated with the medical care provided to the Plaintiff, Demetrio Flores-Hernandez. The Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5) did deviate from accepted medical standards in the medical care and treatment of Mr. Paul Marini. Without limitation, said Defendants did deviate from accepted medical standards in the medical care and treatment of Mr. Demetrio Flores-Hernandez. As said physicians and nurse practitioners were affiliate with NJ Ocean Health Initiative, Inc., said defendants are also vicariously liable for the deviation from acceptable medical standards in the medical care and treatment of Mr. Demetrio Flores-Hernandez.

16. More specifically, it is further alleged that the standard of care rendered by the United State of America, it's employees, including the Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5), fell below the standard of care for patients with similar conditions. During the Defendants treatment of Mr. Flores-Hernandez, Mr. Flores-Hernandez sustained kidney damage necessitating him to be on dialysis for several days a week and requiring a kidney transplant.

17. The Plaintiff, Demetrio Flores-Hernandez, was not made aware of the deviations from the standard of the care and treatment of his condition by the various Defendants until after he was hospitalized in July of 2019. As a result of the Defendants

failure to properly treat the Plaintiff, Mr. Demetrio Flores-Hernandez, for his kidney condition and not properly advise him of said damage, Mr. Demetrio Flores-Hernandez, suffered a severe kidney dysfunction that has now left him requiring dialysis several days a week and a kidney transplant which most likely could have been avoided had these departures from the standard of care not occurred.

18. Attached to this Complaint is a copy of the Affidavit of Merit and Curriculum Vitae of Dr. Raj Kumar Krishnan, who attests as to the professional malpractice committed by the various Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5) identified in this Complaint.

19. The claims of the Plaintiffs, Demetrio Flores-Hernandez and Theresa Lopez, individually and per quod, are cognizable under the New Jersey Federal Tort Claims Act. Should Defendants, the United State of America, it's employees, including the Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5), not be subject to the FTCA as to these Defendants, Plaintiffs allege common law professional negligence under New Jersey State Law.

GRIEF/EMOTIONAL DISTRESS

20. Independent of the prior Counts of this Complaint, the Plaintiff, Demetrio Flores-Hernandez, and his wife, Theresa Lopez, did suffer grief, emotional distress and anguish.

PER QUOD CLAIM - GRIEF/EMOTIONAL DISTRESS

21. The Plaintiff, Theresa Lopez, as the spouse of the Plaintiff, Demetrio Flores-Hernandez, and as such is entitled to the services of society.

22. Plaintiff, Theresa Lopez, was deprived and may be in the future deprived of her spouse consortium society and services as a result of this accident.

23. Plaintiff, Theresa Lopez, has incurred and may in the future be caused to incur great expenses for hospital and/or medical treatment in an effort to cure and alleviate her spouse of the injuries that he sustained.

LACK OF INFORMED CONSENT

24. The Plaintiff, Demetrio Flores-Hernandez, alleges that the Defendants, the United State of America, it's employees, including the Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Schott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5), did not have informed consent from Demetrio Flores-Hernandez to perform negligent medical services to the Plaintiff and their conduct caused and/or contributed to the Plaintiff sustaining permanent kidney damage requiring dialysis three (3) days a week and necessitating a kidney transplant.

WHEREFORE, plaintiffs demand judgment against all defendants, jointly and severally, for compensatory damages, together with interest and costs of suit, as well as such other relief as the Court finds proper.

LOMBARDI & LOMBARDI
Attorneys for Plaintiffs

Date: July 6, 2021

By: 

Paul R. Garelick, Esq.
PaulG@lombardiandlombardi.com

DESIGNATION OF TRIAL COUNSEL

Paul R. Garelick, Esq., is hereby designated as Trial Counsel.

DEMAND FOR JURY TRIAL
(AS TO NON-FTCA CLAIMS)

Plaintiffs hereby demand a trial by jury for all non-Federal Tort Claims Act claims.

LOMBARDI & LOMBARDI, P.A.
Attorneys for Plaintiffs

Dated: July 6, 2021

By: 

Paul R. Garelick, Esq.
PaulG@lombardiandlombardi.com